

Ledwith, Cara L.

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**From:** Miller, Jeff  
**Sent:** Tuesday, October 11, 2011 1:39 PM  
**To:** mara.lewis@ffic.com  
**Cc:** Ledwith, Cara L.  
**Subject:** Claim No. 10510147759: Lower Duwamish Superfund Site - Kaiser Cement and Kaiser Gypsum  
**Attachments:** 12-21-10 Firemans Fund Notice - EU.pdf; 2-1-11 Firemans Fund Notice - EU - Response from Firemans Fund.pdf; Cement-EPA\_Request.pdf; Cement-Response Letter.pdf; Cement-Response.pdf  
**Categories:** LDW

Dear Ms. Lewis,

I am writing to respond to your February 1, 2011 letter acknowledging the December 22, 2010 notice letter that we sent to Fireman's Fund on behalf of Kaiser Cement Corporation ("Kaiser Cement"). In the letter you asked several questions and requested some additional information, including Kaiser Cement's preliminary response to the EPA's request for information. Attached to this email are the EPA request, Kaiser Cement's preliminary response, and a cover letter. We are gathering information to answer your other questions and will do so shortly.

We also represent the Kaiser Gypsum Company, Inc. ("Kaiser Gypsum") with respect to insurance coverage for any liability it has related to the Lower Duwamish Waterway Site. Kaiser Gypsum and Kaiser Cement are separate legal entities that owned and operated facilities at different locations on the Lower Duwamish Waterway and received separate Section 104(e) information requests from the EPA. The two entities have separately responded to EPA's information request and continue to incur separate and distinct defense costs. Accordingly, Kaiser Gypsum sent a separate notice letter dated December 21, 2010 to Fireman's Fund (attached). This notice letter has not been acknowledged by Fireman's Fund. The claims tendered to Fireman's Fund by Kaiser Cement and Kaiser Gypsum are separate and distinct claims for coverage under the relevant policies.

We would greatly appreciate it if you would acknowledge Kaiser Gypsum's notice letter. It would also be helpful if you assign a unique claim number to Kaiser Gypsum's claim for coverage.

Thank you for your assistance.

Jeff

**Jeff Miller**  
**MILLER NASH LLP**  
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Steven F. Hill, P.C.  
Admitted in Washington and Oregon  
steve.hill@millernash.com  
(360) 619-7004 direct line

December 21, 2010

**BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Fireman's Fund Insurance Companies  
777 San Marin Drive  
Novato, CA 94998

Subject: Insured: Kaiser Gypsum Company, Inc.  
Insurer: Fireman's Fund Insurance Company  
Policy No. (Periods): XLX1269069 (12/07/79-04/01/81)  
XLX1372713 (04/01/81-04/01/83)  
XLX1482790 (04/01/83-05/01/84)  
Claim: Lower Duwamish Waterway Superfund Site

Dear Ladies and Gentlemen:

We represent Kaiser Gypsum Company, Inc. ("KGC"), in connection with the necessary investigation that it is undertaking in order to respond to the United States Environmental Protection Agency's ("EPA") February 19, 2010 request for information served on KGC pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9604(e). Section 104(e) of CERCLA obligates KGC to respond to EPA's multi-part questions relating to KGC's historical ownership and operations on riparian property that KGC formerly owned along the Lower Duwamish Waterway ("LDW") in Seattle, Washington. The LDW is a waterway that has been listed on the CERCLA National Priorities List as a federal Superfund site (the "LDW Superfund Site") due to the release or substantial threat of release of hazardous substances in or around the waterway. Compliance with the EPA's Section 104(e) information request is required by law, and failure to respond may subject KGC to an EPA enforcement action and civil penalties of up to \$37,500 per day.

KGC is in the process of investigating its historical connection with the LDW. To date, we have only been able to confirm that KGC owned property and operated a gypsum plant at 5931 East Marginal Way S. in Seattle, Washington on the eastern side of the LDW (the "KGC Property") from 1952 to 1978. To date, KGC has not

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located any former officers or employees of KGC with knowledge of its operations at the KGC Property. On June 23, 2010, KGC filed a preliminary response to EPA's Section 104(e) information request based on the information we were able to gather from real property records, tax records, and certain historical documents that were previously gathered by KGC's defense counsel during KGC's defense of asbestos litigations.

We understand that at or around the time that it ceased active business operations, KGC collected certain of its business records and sent them to storage facilities in California. These documents cover a variety of historical information, and are believed to contain documents related to historical KGC operating facilities in multiple states, including Washington. KGC was able to locate certain indexes of the California documents, but these indexes were not created with EPA's Section 104(e) information request in mind. Therefore, it is very difficult to determine the extent of documents that might contain information responsive to EPA's Section 104(e) information request or the scope of document review that might be necessary to search for such documents. We do know, however, that there are approximately 10,000 boxes of historic documents stored in California.

During preparation of KGC's response to the Section 104(e) information request, we contacted EPA and informed EPA that these historical records existed. We also indicated to EPA that, given the volume of these historical documents, we would not be able to review them by the deadline EPA had imposed for KGC's response. EPA requested that KGC file a preliminary response to the Section 104(e) information request by its deadline using the information and documents readily available to KGC. EPA further requested that KGC agree to conduct a thorough review of the historical records and supplement its response to the Section 104(e) information request in the next few months.

At this time, our office has conducted a preliminary review of the available box indexes for the California documents and it is clear that some boxes may contain information responsive to EPA's Section 104(e) information request. In order to fully respond to EPA's Section 104(e) information request and avoid the imposition of liability on KGC for failing to have done so, counsel for KGC will need to conduct extensive searches of the California documents over the next few months and will need to supplement KGC's preliminary response, as appropriate, based on any responsive information identified as a result of such searches. In sum, KGC needs to undertake the process of conducting an investigation of the available information in order to complete its legal obligation to respond to EPA's Section 104(e) information request.

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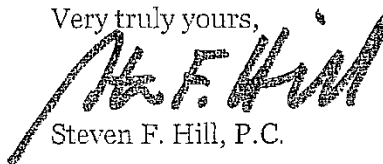
At this time, we do not know if KGC may have contributed to any contamination of the LDW Superfund Site. But as a former owner of property within the boundaries of the LDW Superfund Site, KGC is potentially liable for any contamination of the LDW Superfund Site that may have occurred during KGC's ownership and operation of the KGC Property. In order to assess its potential liability and to comply with its legal obligation to respond to EPA's Section 104(e) information request, KGC is obligated to complete its review of the historical corporate documents stored in California.

Based on our records, Fireman's Fund Insurance Company ("Fireman's Fund") sold excess and/or umbrella liability insurance policies to KGC or its parent Hanson Permanente Cement, Inc. (formerly known as Kaiser Cement & Gypsum Corporation and Kaiser Cement Corporation), naming KGC as an additional insured, during the period from 1979 through 1984. The specific Fireman's Fund policies that we have located to date are listed above.

The EPA's Section 104(e) information request requires KGC to defend itself from any claims that it is a liable party for the contamination discovered in the LDW Superfund Site. Should further review of historical records establish a basis for KGC's potential liability for contamination of the LDW Superfund Site, we expect that EPA will name KGC as a potentially responsible party for the LDW Superfund Site. Accordingly, on behalf of KGC, we hereby put Fireman's Fund on notice of this potential claim and request that Fireman's Fund provide coverage for this claim and any other claims against KGC that are related to the LDW Superfund Site.

If you have any questions, please e-mail me at [steve.hill@millernash.com](mailto:steve.hill@millernash.com) or call me at 360.699.4771.

Very truly yours,



Steven F. Hill, P.C.

cc: Jeffrey D. Hays

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039391-0009/VANDOC5:501#4705.1

**CONFIDENTIAL BUSINESS INFORMATION**

7160 3901 9848 8113 7626

**TO:** Fireman's Fund Insurance Companies  
777 San Marin Drive  
Novato, CA 94998

**SENDER:** MN/Hill/Ledwith

**REFERENCE:** 030391-0008/0009

PS Form 3800, January 2005

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February 1, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Steven F. Hill, P.C.  
Miller Nash  
500 East Broadway  
Suite 400  
Vancouver, Washington 98660-3324

Re: **Insured:** Kaiser Cement Corporation  
**Insurer:** Fireman's Fund Insurance Company  
**Policy No(s):** XLX1269069 (12/07/1979-04/01/1981)  
XLX1372713 (04/01/1981-04/01/1983)  
XLX1482790 (04/01/1983-05/01/1984)  
**Claim:** Lower Duwamish Waterway Superfund Site  
**Claim No.:** 10510147759

Dear Mr. Hill:

As an initial matter, this correspondence serves to acknowledge Fireman's Fund Insurance Company's ("Fireman's Fund") receipt of your December 22, 2010 letter, on behalf of Kaiser Cement Corporation ("KCC"), placing Fireman's Fund on notice of the investigation that apparently is being undertaken by the U.S. Environmental Protection Agency ("EPA") and the EPA's February 19, 2010 request for information, which was served on KCC, relating to the Lower Duwamish Waterway Superfund site ("LDW"). It is our understanding that, presently, the EPA is investigating KCC's past ownership interest and operations on certain property located on the LDW, but that no "claim" or "suit" for any environmental impairment, damages, monetary losses or other costs or expenses, within the meaning of the excess policies issued by Fireman's Fund to KCC (as described below), has been initiated or threatened by the EPA against KCC. If you believe this understanding or any of the information in this letter is incorrect or incomplete, please let me know.

Fireman's Fund  
Insurance Companies  
777 San Marin Drive  
Novato, CA 94998  
[www.firemansfund.com](http://www.firemansfund.com)

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According to your December 22, 2010 letter, KCC has confirmed:

- KCC purchased a portion of a property located at 5975 East Marginal Way South, Seattle, WA (the "Eastside Property") in June 1944, on which KCC constructed a cement distribution facility. That facility began operation in approximately October 1946. The facilities on the Eastside Property that were owned and operated by KCC included a dolphin pier, silos, storage facilities, a sacking plant, railroad spurs, truck loading accommodations, and an office building.
- In December 1953, KCC sold a portion of the Eastside Property to Kaiser Gypsum Company, Inc.
- In October 1958, KCC purchased additional real property, including a water inlet, from Commercial Waterway District No. 1, in order to expand the Eastside Property.
- In January 1965, KCC entered into a long-term lease with the Port of Seattle (the "Port") for the Westside Property. A condition of the lease required KCC to build a cement manufacturing and distribution facility. This facility was constructed and began operations in 1967. KCC entered into a real estate contract with the Port in May 1969. On September 17, 1973, by fulfillment deed, KCC acquired fee title in the property located at 5906 West Marginal Way S.W., Seattle, WA (the "Westside Property").
- On October 1, 1985, KCC sold all of its interest in the remainder of the Eastside Property to Riedel International, Inc.
- On April 14, 1987, KCC sold all of its interest in the Westside Property to Lone Star Industries, Inc.

Based on this recitation of KCC's past ownership interest, a few questions appear to remain unanswered. First, you state that KCC sold a portion of its interest in the Eastside Property to Kaiser Gypsum and then later sold its remaining interest in the Eastside Property to Riedel International. Does Kaiser Gypsum still own a portion of the Eastside Property? If not, please advise as to the change in ownership once Kaiser Gypsum sold its interest in that property. Also,

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does KCC have any ownership interest in or relationship with either Riedl International or Lone Star Industries, Inc.? If so, please describe that ownership interest or relationship. You also state that KCC has provided a preliminary response to the EPA's request for information. Please provide a copy of that preliminary response, as well as any and all correspondence KCC has had with the EPA to date.

That said, this correspondence will communicate Fireman's Fund's current, preliminary coverage position regarding this matter, subject to the limited and incomplete information currently provided by KCC and with a full reservation of Fireman's Fund's rights under the terms and conditions of any and all Fireman's Fund policies, other written agreements between the parties as applicable, if any, and applicable law, and will explain why policies XLX1269609, XLX1372713, and XLX1482790 (hereinafter collectively referred to as "the Excess Policies") are not applicable at this time to the EPA's request for information. If the EPA submits additional requests of any kind or takes any action of any kind against KCC, please let us know so that Fireman's Fund may evaluate those future new developments

Fireman's Fund issued the following Blanket Excess Liability Policies (Following Form) (5902-2/72) to KCC:

Policy Number	Policy Period	Limits of Liability / Attachment Point
XLX1269609	12/07/1979-04/01/1981	\$25 million each occ/agg excess of \$75 million each occ/agg
XLX1372713	04/01/1981-04/01/1983	\$30 million part of \$50 million excess over \$100 million
XLX1482790	04/01/1983-05/01/1984	\$29 million (58%) part of \$50 million excess over \$100 million

Based on the information provided to date, it is our understanding that KCC is seeking coverage from Fireman's Fund relating to the EPA's investigation and request for information relating to the LDW under the policies outlined in the chart above. If you believe there are other policies that were issued by Fireman's Fund that may provide coverage for these matters, please identify and provide copies of such policies at your earliest convenience.

#### **FIREMAN'S FUND'S EXCESS POLICIES ISSUED TO KCC**

The Excess Policies contain the following provisions, without limitation to other terms and conditions, which may be relevant.

The insuring agreements provide:

#### **Insuring Agreements**

1. **Coverage.** To indemnify the Insured for the Insured's ultimate net loss in excess of the insurance afforded under the Blanket Excess Liability or "Umbrella" policies specified in Item 7 of the Declarations, hereafter called underlying insurance, in full force

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and effect at the inception of this policy, provided that the insurance for injury to or destruction of property under this policy and underlying policies shall not apply except as respects injury to or destruction of corporeal property, including loss of use thereof.

2. **Limit of Liability.**<sup>1</sup> The Company shall be liable only for the limit of liability stated in Item 3 of the Declarations in excess of the limit of limits of liability of the applicable underlying insurance policy or policies all as stated in the declarations of this policy. The limit of liability stated in the declarations as applicable to "each occurrence" shall be the total limit of the Company's liability for all damages sustained as the result of any one occurrence, provided, however, in the event of the reduction or exhaustion of any applicable aggregate limit or limits of liability under said underlying policy or policies solely by reason of losses paid thereunder on account of occurrences during this policy period, this policy shall in the event of reduction, apply as excess of the reduced limit of liability thereunder. Subject to the applicable limit of liability as respects each occurrence, the limit of liability stated in the declarations as "aggregate" shall be the total limit of the Company's liability for all damages sustained during each annual period of the policy.

"Ultimate net loss" is defined in the Excess Policies as follows:

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<sup>1</sup> The Limit of Liability provision of policy XLX 1372713 was amended to state:

2. **Limit of Liability.** The Company shall be liable only for the limit of liability stated in Item 3 of the Declarations in excess of the limit of limits of liability of the applicable underlying insurance policy or policies all as stated in the declarations of this policy. The limit of liability stated in the declarations as applicable to "each occurrence" shall be the total limit of the Company's liability for all damages sustained as the result of any one occurrence, provided, however, in the event of the reduction or exhaustion of the applicable aggregate limit or limits of liability under said underlying policy or policies solely by reason of losses paid thereunder on account of occurrences during this policy period, this policy shall in the event of reduction, apply as excess of the reduced limit of liability thereunder. Subject to the applicable limit of liability as respects each occurrence, the limit of liability stated in the declarations as "aggregate" shall be the total limit of the Company's liability for all damages sustained during each annual period of the policy because of (i) personal injury and property damage arising out of the completed operations hazard and products hazard, combined; or (ii) advertising whenever occurring by whatever media, on account of all occurrences; or (iii) injury arising out of any hazard, other than as described in (i) and (ii), to which the underlying policy affords coverage subject to an aggregate limit and to which this policy also applies.

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"Ultimate net loss" means all sums actually paid, or which the Insured is legally obligated to pay, as damages in settlement or satisfaction of claims or suits for which insurance is afforded by this policy, after proper deduction of all recoveries or salvage.

The Excess Policies also contain the following conditions, among other relevant terms and conditions:

1. **Maintenance of Primary Insurance.** The Insured warrants, and it is a condition of this policy, that at the inception of this policy, insurance afforded by the underlying policies of insurance (applying as excess over various policies of primary insurance) with combined limits of liability for said underlying insurance stated in Item 4 of the declarations, or renewals or replacements thereof not affording coverages other than those at inception of this policy, shall be maintained in full effect during the period of this policy, except for reduction of aggregate limits solely as a result of payment of claims arising out of occurrence during this policy period. If such underlying insurance is not maintained in full effect by the Insured or if there is any change in the scope of coverage under any underlying insurance, the insurance afforded by this policy shall apply in the same manner as though such underlying policies had been so maintained and unchanged.

The insurance afforded by this policy is subject to the same warranties, terms (including the terms used to describe the application of the limits of liability), conditions and exclusions as are contained in the underlying insurance on the effective date of this policy, except, unless otherwise specifically provided in this policy, any such warranties, terms, conditions or exclusions relating to premium, the obligation to investigate and defend, the amount and limits of liability, and any renewal agreement.

2. **Notice of Occurrence.** The Insured shall immediately advise the Company of any occurrence or disaster which will probably result in liability under this policy. The Company shall not, however, be called upon to assume charge of the settlement or defense of any claims made, or suits brought, or proceedings instituted against the Insured, but shall have the right and opportunity to be associated with the Insured in the defense and trial of any such claims, suits or proceedings relative to any occurrence which, in the opinion of the Company, may create liability on the part of the Company under the terms of the policy. If the Company avails itself of such right and opportunity, the Insured and the Company shall cooperate in all respects so as to effect a final determination of the claim or claims.

3. **Payment of Loss.** It is a condition of this policy that the insurance afforded under this policy shall apply only after all underlying insurance has been exhausted. Upon final determination by settlement, award or verdict of the liability of the Insured, the Company shall promptly pay the Insured as the Insured shall pay, or be required to pay the amounts of any losses falling within the terms or limits of this insurance. All losses covered under

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this policy shall be due and payable by the Company within 30 days after they are respectively claimed and proof of loss filed with the Company in conformity with this policy. Bankruptcy or insolvency of the Insured shall not relieve the Company of any of its obligations hereunder.

**4. Payment of Expenses.** Loss expenses and legal expenses, including court costs and interest, if any, which may be incurred by the Insured with the consent of the Company in the adjustment or defense of claims, suits or proceedings shall be borne by the Company and the Insured in the proportion that each party's share of loss bears to the total amount of said loss. Loss expense hereunder shall not include salaries and expense of the Insured's employees incurred in investigation, adjustment and litigation.

\* \* \* \* \*

Pursuant to the Insuring Agreements and Maintenance of Primary Insurance, the Excess Policies are subject to the same warranties and terms, conditions and exclusions as contained in the underlying insurance except the obligation to investigate or defend unless otherwise specifically provided in the Excess Policies. Based on our review of the Excess Policies, Fireman's Fund has no such duty to investigate or defend KCC with respect to the EPA's investigation into the LDW Superfund site or its request for information from KCC.

Additionally, we have been unable to obtain copies of all of the underlying insurance policies. Therefore, Fireman's Fund reserves the right to assert all coverage defenses available under the underlying insurance policies. Please provide us with copies of all underlying insurance policies for our review.

Fireman's Fund's has reviewed the terms and conditions of the Excess Policies and information provided by you so far regarding this matter. Based on this review, and subject to the reservation of rights contained herein as well as other applicable written agreements between the parties, if any, and applicable law, we have determined that there is no current obligation under the Excess Policies to defend KCC or to reimburse KCC for expenses related to the EPA's request for information at this time. The EPA's request for information concerning KCC's ownership interest in the LDW does not constitute a "claim" or "suit" for any environmental impairment, damages, monetary losses or other costs or expenses, within the meaning of the Excess Policies issued by Fireman's Fund to KCC. Moreover, under the Excess Policies' "Notice of Occurrence" provision, Fireman's Fund "shall not . . . be called upon to assume charge of the settlement or defense of any claims made, or suits brought, or proceedings instituted against the Insured, but shall have the right and opportunity to be associated with the Insured in the defense and trial of any such claims, suits or proceedings relative to any occurrence which, in the opinion of the Company, may create liability on the part of the Company under the terms of the policy."

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Additionally, based on our review of the terms and conditions of the Excess Policies and the information provided by you, and subject to the reservation of rights contained herein as well as other applicable written agreements between the parties, if any, and applicable law, we have further determined that Fireman's Fund has no current obligation to indemnify KCC under the Excess Policies relating to the request for information, and, if any of KCC's underlying primary policies do not contain aggregate limits on coverage applicable to this claim, Fireman's Fund may never have an obligation to indemnify KCC.

Furthermore, pursuant to the Insuring Agreements and Maintenance of Primary Insurance quoted above, no liability can attach under the Excess Policies until the applicable limits of all underlying insurance and all other insurance have been properly exhausted by the payment of covered claims. Absent a showing of such exhaustion of the applicable limits of underlying insurance and all other insurance, Fireman's Fund has no current obligation to indemnify KCC under the Excess Policies for any losses associated with the EPA's investigation of the LDW Superfund site or its request for information from KCC.

In addition, based on the "Notice of Occurrence" provision set forth above, Fireman's Fund reserves the right to limit or preclude coverage under the Excess Policies, or any one of them as applicable, should it be determined that KCC did not notify Fireman's Fund of the alleged injury and damage in a timely manner:

Although Fireman's Fund has no current obligation to indemnify KCC, and may never have such an obligation, under the Excess Policies for these matters, there are other issues and policy provisions that may operate to limit or preclude coverage. In the event that it is determined that all underlying insurance and other insurance contain applicable aggregate limits and that the underlying insurance and any other insurance has become properly exhausted by payment of covered claims, Fireman's Fund reserves the right to assert the following coverage defenses without limitation to and with full reservation of any and all other coverage defenses that may apply under applicable law and the terms and conditions of the policies:

- 1) Coverage may not be available under the Excess Policies for any claim for equitable relief or injunctive relief;
- 2) Coverage may not be available under the Excess Policies for punitive damages, fines or penalties alleged or recovered in these matters;
- 3) Coverage may not apply under pollution exclusions and other applicable exclusions contained in the Excess Policies, underlying excess insurance, or any other insurance to which Fireman's Fund's Excess Policies may follow form;
- 4) Coverage does not apply to damage or injury that is expected or intended;

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- 5) Coverage will not be provided if KCC knew, or should have known, of any damage or injury prior to the inception of the Excess Policies;
- 6) Coverage may be barred under the Excess Policies, in whole or in part, to the extent such loss arises from any liability assumed by KCC in a contract or agreement;
- 7) Coverage may be barred, in whole or in part, to the extent that one or more of the conditions of the Excess Policies has been breached, including, but not limited to, breach of the Excess Policies' condition regarding timely notice of any occurrence, claim, or suit;
- 8) Coverage may be barred, in whole or in part, to the extent KCC, by its action and/or inaction, has failed to mitigate, minimize, or avoid damages, or has prejudiced the rights of Fireman's Fund under the Excess Policies;
- 9) Coverage may not apply to the extent any alleged loss in these matters does not constitute damage or injury under the policies;
- 10) No coverage will be available should it be determined that the allegations in these matters do not constitute an "occurrence";
- 11) There is no coverage to the extent the alleged damage or injury did not occur during the policy period of the Excess Policies;
- 12) If, and to the extent that, KCC fraudulently concealed, misrepresented, or failed to disclose material facts at the time the Excess Policies were negotiated, placed, or purchased, KCC would not be entitled to coverage under the Excess Policies;
- 13) Coverage may be barred, in whole or in part, to the extent any loss arose out of the willful violation of a penal statute or ordinance committed by, or with the consent of, KCC;
- 14) Coverage may not apply under any and all other applicable exclusions contained in the Excess Policies, the underlying excess policies, or any other insurance to which Fireman's Fund's policies may follow form; and
- 15) Coverage is only provided for "insured(s)" and/or "named insured(s)" as those terms are defined in the Excess Policies.

Fireman's Fund will continue to monitor the developments in this matter as you provide additional information, subject to the aforementioned reservation of rights under the Excess Policies.

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This correspondence is not intended, nor shall it be construed, as an exhaustive listing of policy terms, conditions or exclusions which might apply to these matters, as they have or may continue to develop. Fireman's Fund may supplement the foregoing to include any additional potential bases for reservation of rights or denial of coverage that may be subsequently identified.

Fireman's Fund's coverage position is based on the facts presented to us to date. If KCC possesses or is aware of any additional information that it believes might provide a basis for Fireman's Fund to reconsider or otherwise alter its coverage position for these matters, please forward any such information to my attention. We reserve the right to review any additional information and supplement this analysis, if necessary.

Fireman's Fund's acknowledgment and analysis of the referenced matters and any further action it may take regarding these matters are undertaken subject to a complete reservation of rights which may be available under the Excess Policies and applicable law.

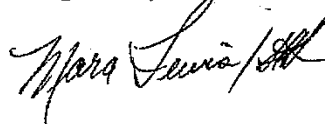
If you believe that this claim has been wrongfully denied or rejected, you may have this matter reviewed by the California Department of Insurance at the following address:

California Department of Insurance  
Consumer Services Division  
300 S. Spring Street, South Tower  
Los Angeles, CA 90013  
800-927-4357 or 213-897-8921

If you have any questions regarding this correspondence or should you wish to discuss it further, please do not hesitate to contact me at (608) 497-0515.

Please direct all future correspondence on this matter to my attention electronically at [mara.lewis@ffic.com](mailto:mara.lewis@ffic.com).

Respectfully submitted,



Mara Lewis  
Claims Specialist  
Fireman's Fund Insurance Company

KG2005152



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

FEB 19 2010

Reply To  
Attn Of: ECL-111

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Hanson Aggregates North America  
RE: Kaiser Cement Corporation  
8505 Freeport Pkwy  
Irving, TX 75063

Re: Request for Information Pursuant to Section 104(e) of CERCLA regarding the former Kaiser Cement Corporation facility in the Lower Duwamish Waterway Superfund Site, Seattle, Washington

Dear Representative of Hanson Aggregates North America:

The Lower Duwamish Waterway Superfund site is located in King County, Washington ("Superfund Site"). Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), commonly known as the "Superfund" law, the Environmental Protection Agency (EPA) is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants. EPA has documented that such a release has occurred at the Superfund Site.

This letter requires you to provide information and documents relating to the property(ies) referenced at the top of the enclosure, and the environmental conditions at, and cleanup of, the Superfund Site. If the addresses for the referenced property(ies) and your business offices are different, you may receive more than one copy of this letter. Only a single response is required.

REQUEST FOR INFORMATION

Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), requires you to respond to the Information Request set forth in the Enclosure to this letter.

Failure to provide a complete, truthful response to this Information Request within sixty (60) days of your receipt of this letter; or to adequately justify such failure to respond, may subject you to an enforcement action pursuant to Section 104(e) of CERCLA. The statute permits EPA to seek the imposition of penalties of up to thirty-seven thousand five hundred dollars (\$37,500) for each day of non-compliance.

KG2005153



Please note that responses which are incomplete, ambiguous, or evasive may be treated as non-compliance with this Information Request. Provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001.

Your response to this Information Request should be mailed to:

United States Environmental Protection Agency, Region 10  
Claire Hong, Remedial Project Manager  
Environmental Cleanup Office, ECL-111  
1200 Sixth Ave. Suite 900  
Seattle, Washington 98101

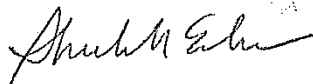
RESOURCES AND INFORMATION FOR SMALL BUSINESSES

EPA has created a number of helpful resources to assist small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at [www.epa.gov](http://www.epa.gov). In addition, the EPA Small Business Ombudsman may be contacted at [www.epa.gov/sbo](http://www.epa.gov/sbo). Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is enclosed with this letter.

If you have questions concerning this letter or the Superfund Site, please contact Claire Hong (206) 553-1813. Any communication by any attorney on your behalf should be directed to Alexander Fidis, EPA Office of Regional Counsel, at (206) 553-4710.

Thank you for your cooperation in this matter.

Sincerely,



Sheila Eckman, Unit Manager  
Site Cleanup Unit #3  
Office of Environmental Cleanup

Enclosures:

Information Request  
Definitions  
Instructions  
Declaration  
SBREFA Fact Sheet

KG2005154

cc: Dan Cargill, Ecology/NWRO

KG2005155

KG2005156

U.S. EPA  
CERCLA SECTION 104(e)  
INFORMATION REQUEST

\*\*\*\*\*

Respondent: Representative of Kaiser Cement Corporation

Site: Lower Duwamish Waterway, Seattle WA

Former Kaiser Cement Corporation Facility  
5906 West Marginal Way SW  
Seattle, WA 98106

King County Parcel: 1924049029

Date: First involvement at the Site to present

\*\*\*\*\*

**Please note:** this Information Request includes instructions for responding to this request and definitions of words such as "Respondent," "Site," and "identify" used in the questions.

INFORMATION REQUEST QUESTIONS

1. Respondent Information
  - a. Provide the full legal name and mailing address of the Respondent.
  - b. For each person answering these questions on behalf of Respondent, provide:
    - i. full name;
    - ii. title;
    - iii. business address; and
    - iv. business telephone number and FAX machine number.
  - c. If Respondent wishes to designate an individual for all future correspondence concerning this Site, please indicate here by providing that individual's name, address, telephone number, and fax number.

- d. State the dates during which Respondent held any property interests at or within one-half mile of the Site.
- e. State the dates during which Respondent conducted any business activity at or within one-half mile of the Site.
- f. Describe the nature of Respondent's business activities at the Site or within one-half mile of the Site.
- g. In relation to your answer to the previous question, identify all materials used or created by your activities at the Site, including raw materials, commercial products, building debris, and other wastes.
- h. If Respondent, its parent corporation, subsidiaries or other related or associated companies have filed for bankruptcy, provide:
  - i. the U.S. Bankruptcy Court in which the petition was filed;
  - ii. the docket numbers of such petition;
  - iii. the date the bankruptcy petition was filed;
  - iv. whether the petition is under Chapter 7 (liquidation), Chapter 11 (reorganization), or other provision; and
  - v. a brief description of the current status of the petition.

2. **Site Activities and Interests**

- a. Provide all documents in your possession regarding the ownership or environmental conditions of the Site, including, but not limited to, copies of deeds, sales contracts, leases, blueprints, "as-builts" and photographs. Environmental conditions of the Site includes information related to soil, sediment, water (ground and surface), and air quality, such as, but not limited to:
  - i. Any spill, leak, release, or discharge of a hazardous substance, waste, or material at or near the Site;
  - ii. Occurrences of violations, citations, deficiencies, and/or accidents concerning the Site;
  - iii. Remediation or removal of contaminated soils, sediments, or other media at the Site; and

- iv. Investigations, inspections, sampling, and reports generated by Respondent and/or others regarding the Site and surrounding area.
- b. Provide information on the condition of the Site when purchased or at the beginning of the relevant time period; describe the source, volume, and content of any fill material used during the construction of the buildings, including waterside structures such as seawalls, wharves, docks, or marine ways. Additionally, describe any subsequent improvements, alterations, demolitions, or additions to the physical structures or the Site itself.
- c. Provide information on past dredging or future planned dredging at this Site.
- d. Provide a brief summary of the activities conducted at the Site while under Respondent's ownership or operation. Include process diagrams or flow charts of the industrial activities conducted at the Site.
- e. Provide all documents pertaining to sale, transfer, delivery, disposal, of any hazardous substances, scrap materials, and/or recyclable materials to this property.
- f. Provide all information on electrical equipment used at the Site, including transformers or other electrical equipment that may have contained polychlorinated biphenyls (PCBs).
- g. Provide information on the type(s) of oils or fluids used for lubrication of machinery or other industrial purposes, and any other chemicals or products which are or may contain hazardous substances which are or were used at the Site for facility operations.
- h. Provide any site drainage descriptions, plans or maps that include information about storm drainage which includes, but is not limited to, above or below surface piping, ditches, catch basins, manholes, and treatment/detention or related structures including outfalls. If available, also include information about connections to sanitary sewer.
- i. With respect to past site activities, please provide copies of any stormwater or drainage studies, including data from sampling, conducted at the Site. Also provide copies of any Stormwater Pollution Prevention, Maintenance Plans, Spill Plans, and any stormwater, process water, or any other discharge permits that may have been developed or obtained for different operations during the Respondent's occupation of the property.
- j. Provide any documentation which pertains to the Site regarding Kaiser Cement Corporation, Kaiser Gypsum Corporation, or any other currently or historically related entities including but not limited to any agreements, contracts, sale documents, conveyance documents, and corporate documents.

**3. Information About Others**

- a. Describe any business relationship you may have had regarding this property or operations thereon with the following entities:
- i. Ash Grove Cement Company,
  - ii. Glacier Northwest, Inc.,
  - iii. Kaiser Cement Corporation,
  - iv. Kaiser Gypsum Corporation, and
  - v. Lone Star Industries, Inc.
- b. Provide the names and last known address of any tenants or lessees, the dates of their tenancy and a brief description of the activities they conducted while operating on the above mentioned Site.
- c. If not already provided, identify and provide a last known address or phone number for all persons, including Respondent's current and former employees or agents, other than attorneys, who have knowledge or information about the generation, use, purchase, storage, disposal, placement, or other handling of hazardous materials at, or transportation of hazardous materials to or from, the Site.

**4. Financial Information**

- a. Provide true and complete copies of all federal income tax documents, including all supporting schedules, for 2004, 2005, 2006, 2007 and 2008. Provide the federal Tax Identification Number and, if documentation is not available, explain why in detail.
- b. Provide the Respondent's financial interest in, control of, or that the Respondent is a beneficiary of any assets (in the U.S. or in another country) that have not been identified in your federal tax returns or other financial information to be presented to EPA. If there are such assets, please identify each asset by type of asset, estimated value, and location.
- c. If Respondent is, or was at any time, a subsidiary of, otherwise owned or controlled by, or otherwise affiliated with another corporation or entity, then describe the full nature of each such corporate relationship, including but not limited to:
- i. a general statement of the nature of relationship, indicating whether or not the affiliated entity had, or exercised, any degree of control over the daily operations or decision-making of the Respondent's business operations at the Site;
  - ii. the dates such relationship existed;
  - iii. the percentage of ownership of Respondent that is held by such other

entity(ies);

- iv. for each such affiliated entity provide the names and complete addresses of its parent, subsidiary, and otherwise affiliated entities, as well as the names and addresses of each such affiliated entity's officers, directors, partners, trustees, beneficiaries, and/or shareholders owning more than five percent of that affiliated entity's stock;
- v. provide any and all insurance policies for such affiliated entity(ies) which may possibly cover the liabilities of the Respondent at the Site; and
- vi. provide any and all corporate financial information of such affiliated entities, including but not limited to total revenue or total sales, net income, depreciation, total assets and total current assets, total liabilities and total current liabilities, net working capital (or net current assets), and net worth.

5. Insurance Coverage

- a. Provide copies of all property, casualty and/or liability insurance policies, and any other insurance contracts referencing the site or facility and/or Respondent's business operations (including, but not limited to, Comprehensive General Liability, Environmental Impairment Liability, Pollution Legal Liability, Cleanup Cost Cap or Stop Loss Policies). Include, without limitation, all primary, excess, and umbrella policies which could be applicable to costs of environmental investigation and/or cleanup, and include the years such policies were in effect.
- b. If there are any such policies from question "5a" above which existed, but for which copies are not available, identify each such policy by providing as much of the following information as possible:
  - i. the name and address of each insurer and of the insured;
  - ii. the type of policy and policy numbers;
  - iii. the per occurrence policy limits of each policy; and
  - iv. the effective dates for each policy.
- c. Identify all insurance brokers or agents who placed insurance for the Respondent at any time during the period being investigated, as identified at the beginning of this request, and identify the time period during which such broker or agent acted in this regard.
- d. Identify all communication and provide all documents that evidence, refer, or relate to



claims made by or on behalf of the Respondent under any insurance policy in connection with the site. Include any responses from the insurer with respect to any claims.

- e. Identify any previous settlements with any insurer in connection with the site, or for any claims for environmental liabilities during the time period under investigation. Include any policies surrendered or cancelled by the Respondent or insurer.
- f. Identify any and all insurance, accounts paid or accounting files that identify Respondent's insurance policies.
- g. Identify Respondent's policy with respect to document retention.

6. **Compliance with This Request**

- a. Describe all sources reviewed or consulted in responding to this request, including, but not limited to:
  - i. the name and current job title of all individuals consulted;
  - ii. the location where all documents reviewed are currently kept.

## INSTRUCTIONS

1. Answer Each Question Completely. Provide a separate answer to each question and subpart set forth in this Information Request. Incomplete, evasive, or ambiguous answers shall constitute failure to respond to this Information Request and may subject the Respondent to the penalties set out in the cover letter.
2. Response Format and Copies. Provide the responses to this Information Request and at least one copy of all requested documents either electronically or on paper (hard copy). Your submission, whether electronic or hard copy, must include an index that lists all the responsive documents provided, and that indicates where each document is referenced in the written response, and to which question or questions each document is responsive. Additionally, please clearly identify and segregate any information you determine to be Confidential Business Information (CBI).

If providing your response electronically, it must be submitted on a compact disc in Portable Document Format (PDF) and comply with the following requirements:

- a. CBI and personal privacy information should be provided on separate media (e.g., a separate CD) and marked as such to ensure information is appropriately handled and physically separated from the other response information in EPA's files.
  - b. The declaration must be provided in hard copy with an original signature.
  - c. All documents originally smaller than 11 by 17 inches can be submitted electronically; any documents originally larger than 11 by 17 inches must be submitted in hard copy.
  - d. Electronic PDF files cannot be submitted in Adobe Acrobat versions above 6 (or above PDF format version 1.5 if not using Adobe).
  - e. Electronic PDF files must be text-searchable.
  - f. The document index must clearly identify any single electronic document which has been separated into multiple electronic files (because of size limitation or otherwise) and each component file that comprises the full document.
3. Number Each Answer. Number each answer with the number of the question to which it corresponds.
  4. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. Seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered noncompliance with this Information Request.

5. Identify Information Sources. For each question, identify all persons and documents relied upon for the answer.
6. Confidential Information. The information requested herein must be provided even though the Respondent may contend that it includes confidential information or trade secrets. The Respondent may assert a confidentiality claim covering part or all of the information requested, pursuant to 42 U.S.C. §§ 9604(e)(7)(E) and (F), and 40 C.F.R. § 2.203(b). All information claimed to be confidential should be contained on separate sheet(s) and should be clearly identified as "trade secret" or "proprietary" or "company confidential." A confidentiality claim should be supported by the submission of information consistent with 40 C.F.R. Part 2. Information covered by a confidentiality claim will be disclosed by EPA only to the extent, and only by means of the procedures, provided in 40 C.F.R. §§ 2.201-2.311. **If no such claim accompanies the information received by EPA, it may be made available to the public by EPA without further notice.**
7. Disclosure to EPA Contractor. Information submitted in response to this Information Request may be disclosed by EPA to authorized representatives of the United States, pursuant to 40 C.F.R. § 2.310(h), even if the Respondent asserts that all or part of it is confidential business information. EPA may provide this information to its contractors for the purpose of organizing and/or analyzing the information contained in the responses to this Information Request. If submitting information and asserting it is entitled to treatment as confidential business information, the Respondent may comment on EPA's intended disclosure within 14 days of receiving this Information Request.
8. Personal Privacy Information. Personnel and medical files, and similar files the disclosure of which to the general public may constitute an invasion of privacy, should be segregated from responses, included on separate sheet(s), and marked as "Personal Privacy Information". Note, however, that unless prohibited by law, EPA may disclose this information to the general public without further notice.
9. Objections. The Respondent must provide responsive information notwithstanding objections to certain questions. To object without providing responsive information may subject Respondent to the penalties set out in the cover letter.
10. Privilege. If a privilege is asserted for any document responsive to this Information Request, identify (see Definitions) the document and provide the basis for assertion. If a privilege exists for only a portion of a document, provide the portion of the document that is not asserted be privileged, identify the portion that is asserted to be privileged, and provide the basis for asserting privilege. **Please note that regardless of the assertion of any privilege, any facts contained in the document which are responsive to the Information Request must be disclosed in your response.**
11. Declaration. The Respondent must complete the enclosed declaration, certifying the accuracy of all statements in your response.

## DEFINITIONS

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601, *et seq.*, or Volume 40 of the Code of Federal Regulations (CFR), in which case such statutory or regulatory definitions shall apply.

The following definitions shall apply to the following words as they appear in this Enclosure:

1. The term "Respondent" shall mean the addressee of this Request, together with the addressee's agents, employees, and contractors.
2. The terms "document" and "documents" shall mean any method of recording, storing, or transmitting information. "Document" shall include, but not be limited to:
  - a. writings of any kind, including, but not limited to, any of the following:
    - i. letters, memoranda, fax transmittals;
    - ii. meeting minutes, telephone records, notebooks;
    - iii. agreements and contracts;
    - iv. reports to shareholders, management, or government agencies;
    - v. transportation manifests;
    - vi. copies of any document.
  - b. any film, photograph, or sound recording on any type of device;
  - c. any blueprints or drawings;
  - d. attachments to, or enclosures with, any document.
3. The term "identify" means, with respect to a natural person, to set forth: (a) the person's full name, (b) present or last known business and home addresses and telephone numbers; and (c) present or last known employer (include full name and address) with job title, position, or business.
4. The term "identify" means, with respect to a corporation, partnership, business trust, or other entity, to set forth: (a) its full name; (b) complete street address; (c) legal form (e.g., corporation, partnership, etc.); (d) the state under whose laws the entity was organized; and (e) a brief description of its business.

5. The term "identify" means, with respect to a document, to provide: (a) its customary business description (e.g., letter, invoice); (b) its date; (c) its number if any (e.g., invoice or purchase order number); (d) the identity of the author, addressee, and/or recipient; and (e) a summary of the substance or the subject matter. **Alternatively**, Respondent may provide a complete copy of the document.
6. The term "material" or "materials" shall mean any and all raw materials, commercial products, wastes, chemicals, substances, or matter of any kind.
7. The "period being investigated" and "the relevant time period" shall mean the date of Respondent's first involvement at the Site to present.
8. The term "property" shall mean any interest in real or personal property whatsoever, including fee interests, leases, licenses, rental, and mineral rights.
9. The "Site" shall mean any or all property or area described as or near the former Kaiser Cement Corporation facility at 5906 West Marginal Way SW; and King County Tax Parcel: 1924049029.
10. The term "waste" or "wastes" shall mean and include trash, garbage, refuse, by-products, solid waste, hazardous waste, hazardous substances, and pollutants or contaminants, whether solid, liquid, or sludge, including, but not limited to, building debris and asbestos-containing material.
11. The term "business activities" shall mean all actions, endeavors, ventures, or financing arrangements related in any manner whatsoever to the use and development of the Site, including surveying, sampling, grading, documentation, photography, demolition, construction, and waste disposal, and sales.

DECLARATION

I declare under penalty of perjury that I am authorized to respond on behalf of Respondent and that the foregoing is complete, true, and correct.

Executed on \_\_\_\_\_, 2010.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

Mailing Address:

Hanson Aggregates North America  
RE: Kaiser Cement Corporation  
8505 Freeport Pkwy  
Irving, TX 75063

KG2005168



WWW.MILLERNASH.COM

Steven F. Hill, P.C.  
steve.hill@millernash.com  
(360) 619-7004 direct line

File  
500 East Broadway  
Suite 400  
Vancouver, Washington 98660-3324  
OFFICE 360.699.4771  
FAX 360.694.6413

June 23, 2010

United States Environmental Protection Agency, Region 10  
Claire Hong, Remedial Project Manager  
Environmental Cleanup Office, ECL-111  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Subject: Initial Response to U.S. EPA CERCLA Section 104(e) Information Request  
Lower Duwamish Waterway, Seattle, Washington  
Hanson Permanente Cement, Inc. (f/k/a Kaiser Cement Corporation)  
5906 West Marginal Way SW., Seattle, WA (Parcel No. 1924049029)  
5975 East Marginal Way S., Seattle, WA (Parcel No. 1924049075)

Dear Ms. Hong:

On behalf of Hanson Permanente Cement, Inc. (f/k/a Kaiser Cement Corporation)(hereinafter referred to as "Kaiser Cement"), we submit Kaiser Cement's initial response to the Information Request issued by the U.S. Environmental Protection Agency ("EPA") under CERCLA Section 104(e) and dated February 19, 2010 (the "Request"). The Request was received by Kaiser Cement on or about February 22, 2010. On April 19, 2010, Kaiser Cement requested, in writing, an extension of time to respond to the Request. An extension was granted by EPA on April 21, 2010, extending the date for Kaiser Cement's response to June 23, 2010.

Since Kaiser Cement has no current operations in the Seattle area, Kaiser Cement first undertook to identify its historical involvement with the real property identified in the Request (King County Parcel No. 1924049029). During this initial investigation, Kaiser Cement identified an additional parcel along the Lower Duwamish Waterway that Kaiser Cement owned historically (King County Parcel No. 1924049075). Collectively, we refer to these parcels as the "Seattle Properties."

In a subsequent telephone conference and e-mail exchange with you, EPA identified another parcel (King County Parcel No. 5367204505) that EPA believes was connected to Kaiser Cement's historic operations. We conducted a title search of this additional parcel and found that Kaiser Cement was not listed in the title history for this

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039391-0007/VANDOC5:50142050.2



  
MILLER NASH

WWW.MILLERNASH.COM

United States Environmental Protection Agency, Region 10  
June 23, 2010  
Page 2

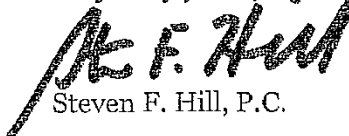
parcel. Therefore, we have no basis to confirm that Kaiser Cement had any connection to this additional parcel.

As stated in its Initial Statement, Kaiser Cement has not conducted any active business operations in the state of Washington since 1987, and currently has no employees in Washington. In addition, based on available information, Kaiser Cement does not know the current whereabouts of any of its former Washington employees that might have knowledge about the Seattle Properties. Therefore, Kaiser Cement's response to the Request is based solely on counsel for Kaiser Cement's review of historical documents, title records, and corporate tax and corporate ownership and governance documents.

At or around the time that its operations ceased in Washington, Kaiser Cement collected certain of its business records relating to the Seattle Properties and sent them to storage facilities in California. These documents are still stored in California and are subject to strict retention directives related to ongoing litigation involving Kaiser Cement. These stored document collections cover a variety of historical information, and are believed to contain documents related to historical operating facilities in multiple states, including Washington. Counsel for Kaiser Cement was able to locate certain indexes of the California documents, but these indexes were not identified with sufficient time prior to the June 23, 2010 deadline to search the indexes or to search any boxes that might be identified for further review based on such an index search. Over the next few months, counsel for Kaiser Cement will conduct such searches and will supplement this Initial Response, as appropriate, based on any responsive information identified as a result of such searches.

The relevant documents that were available for review are enclosed with Kaiser Cement's response on two separate compact disks. Some of the responsive documents contain tax, financial, insurance, or other internal corporate data that Kaiser Cement asserts are Confidential Business Information ("CBI") pursuant to 42 U.S.C. §§ 9604(e)(7)(E). We have providing the CBI documents on a separate disk marked "Confidential Business Information" consistent with 40 C.F.R §2.203(b). We request that EPA take appropriate measures to properly safeguard the CBI documents and to protect against the improper disclosure of the CBI documents or the information contained in those documents, as required by 40 C.F.R §2.211.

Very truly yours,

  
Steven F. Hill, P.C.

KG2005170

039391-0007/VANDOC5:50142050.2



**MILLER NASH**<sup>LLP</sup>  
ATTORNEYS AT LAW

PORTLAND, OREGON  
SEATTLE, WASHINGTON  
VANCOUVER, WASHINGTON  
CENTRAL OREGON  
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United States Environmental Protection Agency, Region 10  
June 23, 2010  
Page 3

bcc. Charles E. McChesney II, Esq.

KG2005171

039391-0007/VANDOC5:50142050.2

HANSON PERMANENTE CEMENT, INC.'S (F/K/A KAISER CEMENT CORP.)

INITIAL RESPONSES TO U.S. ENVIRONMENTAL PROTECTION AGENCY

CERCLA SECTION 104(e) INFORMATION REQUEST

\*\*\*\*\*

Respondent: Hanson Permanente Cement, Inc.  
(formerly known as Kaiser Cement Corporation)

Site: Lower Duwamish Waterway, Seattle, WA  
5906 West Marginal Way SW  
5975 East Marginal Way S.  
Seattle, WA

King County Parcels: 1924049029 and 1924049075

Date: First involvement at the Site to present

\*\*\*\*\*

On or about February 22, 2010, Hanson Permanente Cement, Inc. (f/k/a Kaiser Cement Corporation) ("Kaiser Cement") was served with a Request for Information (the "Request") from the United States Environmental Protection Agency ("USEPA") issued pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9604(e), regarding the Lower Duwamish Waterway Superfund Site located in King County, Seattle, Washington ("Site"). Pursuant to an extension granted by the USEPA, the deadline for Kaiser Cement's initial response to the Request is June 23, 2010.

Kaiser Cement hereby submits its initial objections and responses to the Request (this "Initial Response"), and states as follows:

**INITIAL STATEMENT**

Kaiser Cement conducted cement distribution and manufacturing operations in the Seattle area starting in the 1940s. Based on available information, Kaiser Cement owned and operated cement operations at two separate locations in the vicinity of the Site, including 5906 West Marginal Way SW (King County Parcel No. 1924049029) (the "Westside Property") and 5975 East Marginal Way S. (King County Parcel Nos. 1924049075) (the "Eastside Property") in Seattle, Washington (collectively referred to as the "Seattle Properties").

Kaiser Cement has not conducted any active business operations in the state of Washington since 1987, and currently has no employees in Washington. In addition, based on available information, Kaiser Cement does not know the current whereabouts of any of its former Washington employees that might have knowledge about the Seattle Properties. Therefore, Kaiser Cement's response to the Request is based solely on counsel for Kaiser Cement's review of historical documents, title records, and corporate tax and corporate ownership and governance documents.

Kaiser Cement has gone through a number of corporate mergers and name changes over the time periods relevant to this Initial Response (1944 to the present). The Permanente Corporation first was incorporated in California on or about February 10, 1939. In 1943, the name of The Permanente Corporation was changed to Permanente Cement Company. In 1964, the name of the corporation was changed to Kaiser Cement & Gypsum Corporation. In 1979, the name of the corporation again was changed, this time to Kaiser Cement Corporation. In 1982, Kaiser Cement Corporation, the California corporation, was merged with and into Kaiser Cement Corporation, a Delaware corporation, with Kaiser Cement Corporation (Delaware) being the surviving corporation. On February 3, 1989, Kaiser Cement Corporation (Delaware) was merged with and into Superlite Builders Supply, Inc., an Arizona corporation, with Superlite Builders Supply, Inc. being the surviving corporation. Immediately after the merger, Superlite Builders Supply, Inc. changed its name to Kaiser Cement Corporation. In February 1999, Kaiser Cement Corporation, the Arizona corporation, changed its name to Hanson Permanente Cement, Inc., its current name. Hanson Permanente Cement, Inc. remains incorporated under the laws of the state of Arizona. All of the foregoing entities are referred to collectively herein as "Kaiser Cement."

At or around the time that its operations ceased in Washington, Kaiser Cement collected certain of its business records relating to the Seattle Properties and sent them to storage facilities in California. These documents are still stored in California and are subject to strict retention directives related to ongoing litigation involving Kaiser Cement. These stored document collections cover a variety of historical information, and are believed to contain documents related to historical operating facilities in multiple states, including Washington. Counsel for Kaiser Cement was able to locate certain indexes of the California documents, but these indexes were not identified with sufficient time prior to the June 23, 2010 deadline to search the indexes or to search any boxes that might be identified for further review based on such an index search. Over the next few months, counsel for Kaiser Cement will conduct such searches and will supplement this Initial Response, as appropriate, based on any responsive information identified as a result of such searches.

Preliminary review of the available historical documents has confirmed the following:

- Kaiser Cement purchased a portion of the Eastside Property in June 1944. Kaiser Cement constructed a cement distribution facility on the Eastside Property, which started operation in approximately October 1946. The facilities on the Eastside Property that were owned and operated by Kaiser Cement included a dolphin pier, silos, storage facilities, a sacking plant, railroad spurs, truck loading accommodations, and an office building.
- In December 1953, Kaiser Cement sold a portion of the Eastside Property to Kaiser Gypsum Company, Inc. ("Kaiser Gypsum"), and this sold portion of the Eastside Property eventually became part of what is now King County Parcel No. 1924049092.
- In October 1958, Kaiser Cement purchased additional real property, including a water inlet, to expand the Eastside Property from Commercial Waterway District No. 1.

- Kaiser Cement entered into a long-term lease with the Port of Seattle (the "Port") for the Westside Property in January 1965. A condition of the lease required Kaiser Cement to build a cement manufacturing and distribution facility. This facility was constructed and began operations in 1967. Kaiser Cement entered into a real estate contract with the Port in May 1969. By fulfillment deed, Kaiser Cement acquired fee title in the Westside Property on September 17, 1973.
- On October 1, 1985, Kaiser Cement sold all of its interest in the remainder of the Eastside Property to Riedel International, Inc.
- On April 14, 1987, Kaiser Cement sold all of its interest in the Westside Property to Lone Star Industries, Inc.

### GENERAL OBJECTIONS

Kaiser Cement makes the following general objections to each individually numbered and segregated request for information contained in the Request, and to the definitions and instructions contained in the Request, to the extent applicable, on the following bases, as if each of the following general objections were repeated in full in Kaiser Cement's response to each individual request:

1. Kaiser Cement objects to USEPA's statement that "Incomplete, evasive or ambiguous answers shall constitute failure to respond . . ." Kaiser Cement has no way to determine in advance which types of answers USEPA will deem to be incomplete, evasive or ambiguous. Kaiser Cement will make a good faith effort to provide complete, forthright and unambiguous answers.
2. Kaiser Cement objects to USEPA's statement that "regardless of the assertion of any privilege, any facts contained in the document which are responsive to the Information Request must be disclosed in your response . . ." as contrary to law. Attorney-client privileged communications do not lose their privileged status because they contain factual information, and the entirety of any privileged communication is protected from disclosure, even the factual information contained therein. Without waiving, limiting or otherwise prejudicing the foregoing objection, and while preserving all rights and defenses that it may have with respect to information that may be protected from disclosure under the work product doctrine, attorney-client privilege or other applicable privilege or protection from disclosure, Kaiser Cement will make a good faith effort to disclose relevant facts within its possession.
3. Kaiser Cement objects to USEPA's definition of "business activities" as overly-broad, unduly burdensome and oppressive.
4. Kaiser Cement objects to USEPA's definition of the term "material" because it includes "all raw materials, commercial products, wastes, chemicals, substances, or matter of any kind." This definition is so vague, ambiguous, overly-broad and unduly burdensome that it could be interpreted to mean literally anything. As such, it is not possible for Kaiser Cement to provide responses which take this definition into account. Kaiser Cement will make a good faith effort to disclose relevant facts within its possession.

5. Kaiser Cement objects to USEPA's definition of "Property" on the grounds that it includes "personal property" and "fee interests, leases, licenses, rental and mineral rights." As such, the definition is vague, ambiguous, overly-broad and unduly burdensome. Answers in this Response are limited to immoveable property and fixtures thereon.

6. Kaiser Cement objects to USEPA's Request, including without limitation the instructions and definitions thereof, to the extent that it seeks or requests information, documents, or actions of Kaiser Cement that go beyond the scope of USEPA's authority under CERCLA, including without limitation, 42 U.S.C. § 9604(e).

**1. Respondent Information**

a. *Provide the full legal name and mailing address of the Respondent.*

**Response:** Hanson Permanente Cement, Inc., 300 E. John Carpenter Freeway, Suite 1800, Irving, Texas 75062.

b. *For each person answering these questions on behalf of Respondent, provide:*

- i. *full name;*
- ii. *title;*
- iii. *business address; and*
- iv. *business telephone number and FAX machine number.*

**Response:** All answers contained in this Initial Response, except for those questions concerning property ownership, federal income tax returns, and corporate ownership and governance, were prepared by in-house and outside counsel on behalf of Kaiser Cement based on a review of historical documents. Kaiser Cement's in-house counsel is:

Charles E. McChesney II  
Senior Counsel  
Three Rivers Management, Inc.  
on behalf of Hanson Permanente Cement, Inc.  
One Oxford Centre, Suite 3000  
Pittsburgh, PA, 15219  
412-208-8839, 412-208-8803  
[charles.mcchesney@trmi.biz](mailto:charles.mcchesney@trmi.biz).

Federal income tax returns and information related thereto were provided by:

John Hutchinson  
Senior Director, Taxes  
Lehigh Hanson, Inc.  
300 E. John Carpenter Freeway  
Irving, TX 75062

Phone: 972-653-6071

Fax: 972-819-1735

Corporate ownership history and information related thereto were provided by:

Amy Yi  
Assistant Secretary  
Hanson Permanente Cement, Inc.  
300 E. John Carpenter Freeway, Suite 1800  
Irving, TX 75062  
Phone: 972-653-6140  
Fax: 972-819-1731

- c. *If Respondent wishes to designate an individual for all future correspondence concerning this Site, please indicate here by providing that individual's name, address, telephone number, and fax number.*

**Response:** Please direct all future communications to the following:

Charles E. McChesney II  
Senior Counsel  
Three Rivers Management, Inc.  
on behalf of Hanson Permanent Cement, Inc.  
One Oxford Centre, Suite 3000  
Pittsburgh, PA, 15219  
Phone: 412-208-8839  
Fax: 412-208-8803  
[charles.mcchesney@trmi.biz](mailto:charles.mcchesney@trmi.biz).

- d. *State the dates during which Respondent held any property interests at or within one-half mile of the Site.*

**Response:** Kaiser Cement purchased the Eastside Property in separate transactions on June 23, 1944 and October 14, 1958. A portion of the Eastside Property acquired in 1944 was sold to Kaiser Gypsum in December 1953. Kaiser Cement sold the remainder of the Eastside Property on October 1, 1985 to Ridel International, Inc.

Kaiser Cement entered into a long term lease with the Port in 1965 for the Westside Property. In May 1969, Kaiser Cement entered into a real estate contract with the Port and, by a fulfillment deed, acquired fee title to the Westside Property on September 17, 1973. Kaiser Cement sold the Westside Property on April 14, 1987 to Lone Star Industries, Inc.

- e. *State the dates during which Respondent conducted any business activity at or within one-half mile of the Site.*

**Response:** Based on the information known to date, Kaiser Cement operated a cement distribution facility on the Eastside Property from October 1946 to October 1985 and



operated a cement manufacturing and distribution facility on the Westside Property from 1967 to April 1987.

- f. *Describe the nature of Respondent's business activities at the Site or within one-half mile of the Site.*

**Response:** See response to Question 1(e) above as if fully set forth herein.

- g. *In relation to your answer to the previous question, identify all materials used or created by your activities at the Site, including raw materials, commercial products, building debris, and other wastes.*

**Response:** Kaiser Cement objects to the term "activities" on the grounds that it is vague, ambiguous and overly broad. Nevertheless, without waiving the foregoing objection, Kaiser Cement responds herein based on its understanding of the term "activities." As stated above, based on a review of the limited information available, Kaiser Cement either manufactured or distributed cement from the Seattle Properties. Kaiser Cement will supplement its response to this question if further review of documents reveals information responsive to this request.

- h. *If Respondent, its parent corporation, subsidiaries or other related or associated companies have filed for bankruptcy, provide:*
- i. *the U.S. Bankruptcy Court in which the petition was filed;*
  - ii. *the docket numbers of such petition;*
  - iii. *the date the bankruptcy petition was filed;*
  - iv. *whether the petition is under Chapter 7 (liquidation), Chapter 11 (reorganization), or other provision; and*
  - v. *a brief description of the current status of the petition.*

**Response:** Kaiser Cement objects to the terms "other related or associated companies" on the grounds that it is vague, ambiguous and overly broad and Kaiser Cement does not know what meaning USEPA attaches to such terms. Nevertheless, without waiving the foregoing objection, based on available information, neither Kaiser Cement, nor its parent corporation, nor its subsidiary has filed for bankruptcy.

2. **Site Activities and Interests**

- a. *Provide all documents in your possession regarding the ownership or environmental conditions of the Site, including, but not limited to, copies of deeds, sales contracts, leases, blueprints, "as-builts" and photographs. Environmental conditions of the Site includes information related to soil, sediment, water (ground and surface), and air quality, such as, but not limited to:*



**Response:** Kaiser Cement objects to the term “environmental conditions” on the grounds that it is overly broad, vague and ambiguous. Nevertheless, without waiving the foregoing objection, Kaiser Cement responds herein based on its understanding of the term “environmental conditions.”

- i. *Any spill, leak, release, or discharge of a hazardous substance, waste, or material at or near the Site;*

**Response:** Kaiser Cement objects to the term “hazardous substance” on the grounds that it is vague, ambiguous and overly broad. Nevertheless, without waiving the foregoing objection, Kaiser Cement responds herein based on its understanding of the term “hazardous substance.” Notwithstanding the foregoing objections, Kaiser Cement is not aware of any documents responsive to this request at this time, however, it will supplement its answer to this question if further review of documents reveals information responsive to this request.

- ii. *Occurrences of violations, citations, deficiencies, and/or accidents concerning the Site;*

**Response:** Notwithstanding the foregoing objection, Kaiser Cement is not aware of any documents responsive to this request at this time, however, it will supplement its answer to this question if further review of documents reveals information responsive to this request.

- iii. *Remediation or removal of contaminated soils, sediments, or other media at the Site; and*

**Response:** Notwithstanding the foregoing objection, Kaiser Cement is not aware of any documents responsive to this request at this time, however, it will supplement its answer to this question if further review of documents reveals information responsive to this request.

- iv. *Investigations, inspections, sampling, and reports generated by Respondent and/or others regarding the Site and surrounding area.*

**Response:** Notwithstanding the foregoing objection, Kaiser Cement is not aware of any documents responsive to this request at this time, however, it will supplement its answer to this question if further review of documents reveals information responsive to this request.

- b. *Provide information on the condition of the Site when purchased or at the beginning of the relevant time period; describe the source, volume, and content of any fill material used during the construction of the buildings, including waterside structures such as seawalls, wharves, docks, or marine ways. Additionally, describe any subsequent improvements, alterations, demolitions, or additions to the physical structures or the Site itself.*

**Response:** Kaiser Cement objects to the terms “condition of the Site” on the grounds that it is overly broad, vague and ambiguous. Nevertheless, without waiving the foregoing objection, Kaiser Cement responds herein based on its understanding of the terms “condition of the Site.” Notwithstanding the foregoing objections, Kaiser Cement is not aware of any documents responsive to this request at this time, however, it will supplement its answer to this question if further review of documents reveals information responsive to this request.

c. *Provide information on past dredging or future planned dredging at this Site.*

**Response:** Notwithstanding the foregoing objections, Kaiser Cement is not aware of any documents responsive to this request at this time, however, it will supplement its answer to this question if further review of documents reveals information responsive to this request. Kaiser Cement has no future planned dredging at this Site.

d. *Provide a brief summary of the activities conducted at the Site while under Respondent's ownership or operation. Include process diagrams or flow charts of the industrial activities conducted at the Site.*

**Response:** Kaiser Cement objects to the terms “activities” and “industrial activities” on the grounds that they are vague, ambiguous and overly broad. Nevertheless, without waiving the foregoing objection, Kaiser Cement responds herein based on its understanding of the terms “activities” and “industrial activities.” Notwithstanding the foregoing objections, Kaiser Cement operated a cement distribution facility on the Eastside Property and operated a cement manufacturing and distribution facility on the Westside Property. Following further review of historical documents, Kaiser Cement hopes to provide additional details of its operations at the Seattle Properties.

e. *Provide all documents pertaining to sale, transfer, delivery, disposal, of any hazardous substances, scrap materials, and/or recyclable materials to this property.*

**Response:** Kaiser Cement objects to the terms “hazardous substances,” “scrap materials,” and “recyclable materials” on the grounds that they are vague, ambiguous and overly broad. Nevertheless, without waiving the foregoing objection, Kaiser Cement responds herein based on its understanding of the terms “hazardous substances,” “scrap materials,” and “recyclable materials.” Notwithstanding the foregoing objections, Kaiser Cement is not aware of any documents responsive to this request at this time, however, it will supplement its answer to this question if further review of documents reveals information responsive to this request.

f. *Provide all information on electrical equipment used at the Site, including transformers or other electrical equipment that may have contained polychlorinated biphenyls (PCBs).*

**Response:** Kaiser Cement objects to the term “electrical equipment” on the grounds it is vague, ambiguous and overly broad. Nevertheless, without waiving the foregoing objection, Kaiser Cement will respond in good faith to provide information that may be

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relevant to USEPA's inquiry concerning what Kaiser Cement understands to be the meaning of the term "electrical equipment." Notwithstanding the foregoing objections, Kaiser Cement is not aware of any documents responsive to this request at this time, however, it will supplement its answer to this question if further review of documents reveal information responsive to this request.

- g. *Provide information on the type(s) of oils or fluids used for lubrication of machinery or other industrial purposes, and any other chemicals or products which are or may contain hazardous substances which are or were used at the Site for facility operations.*

**Response:** Kaiser Cement objects to the terms "industrial purposes" and "products" on the grounds they are vague, ambiguous and overly broad. Nevertheless, without waiving the foregoing objection, Kaiser Cement responds herein based on its understanding of the terms "industrial purposes" and "products." Notwithstanding the foregoing objections, Kaiser Cement is not aware of any documents responsive to this request at this time, however, it will supplement its answer to this question if further review of documents reveals information responsive to this request.

- h. *Provide any site drainage descriptions, plans or maps that include information about storm drainage which includes, but is not limited to, above or below surface piping, ditches, catch basins, manholes, and treatment/detention or related structures including outfalls. If available, also include information about connections to sanitary sewer.*

**Response:** Notwithstanding the foregoing objection, Kaiser Cement is not aware of any documents responsive to this request at this time, however, it will supplement its answer to this question if further review of documents reveals information responsive to this request.

- i. *With respect to past site activities, please provide copies of any stormwater or drainage studies, including data from sampling, conducted at the Site. Also provide copies of any Stormwater Pollution Prevention, Maintenance Plans, Spill Plans, and any stormwater, process water, or any other discharge permits that may have been developed or obtained for different operations during the Respondent's occupation of the property.*

**Response:** Kaiser Cement objects to the term "past site activities" on the grounds it is vague, ambiguous and overly broad. Nevertheless, without waiving the foregoing objection, Kaiser Cement responds herein based on its understanding of the term "past site activities." Notwithstanding the foregoing objections, Kaiser Cement is not aware of any documents responsive to this request at this time, however, it will supplement its answer to this question if further review of documents reveals information responsive to this request.

3. Information About Others

- a. *Describe any business relationship you may have had regarding the property or operations thereon with the following entities:*

**Response:** Kaiser Cement objects to the term "business relationship" on the grounds it is vague, ambiguous and overly broad. Nevertheless, without waiving the foregoing objection, Kaiser Cement responds herein based on its understanding of the term "business relationship."

- i. *Ash Grove Cement Company*

**Response:** Notwithstanding the foregoing objection, Kaiser Cement is not aware of any relationship between Kaiser Cement and Ash Grove Cement Company related to Kaiser Cement's former facilities at the Seattle Properties. Kaiser Cement will supplement its answer to this question if further review of documents reveals information responsive to this request.

- ii. *Glacier Northwest, Inc.*

**Response:** Notwithstanding the foregoing objection, Kaiser Cement is not aware of any relationship between Kaiser Cement and Glacier Northwest, Inc. related to Kaiser Cement's former facilities at the Seattle Properties. Kaiser Cement will supplement its answer to this question if further review of documents reveals information responsive to this request.

- iii. *Kaiser Cement Corporation*

**Response:** Notwithstanding the foregoing objection, Kaiser Cement Corporation is the former name of Kaiser Cement.

- iv. *Kaiser Gypsum Corporation, and.*

**Response:** Notwithstanding the foregoing objection, Kaiser Cement has no knowledge of an entity named "Kaiser Gypsum Corporation." Kaiser Cement, however, is the one hundred percent (100%) owner of all outstanding shares of the entity known as Kaiser Gypsum Company, Inc.

- v. *Lone Star Industries, Inc.*

**Response:** Notwithstanding the foregoing objection, as discussed above, Lone Star Industries, Inc. purchased the Westside Property from Kaiser Cement in 1987.

- b. *Provide the names and last known address of any tenants or lessees, the dates of their tenancy and a brief description of the activities they conducted while operating on the above mentioned Site.*

**Response:** As discussed above, from 1965 to 1973, Kaiser Cement was a tenant under a long term lease with the Port at the Westside Property. Kaiser Cement acquired fee title for the Westside Property by fulfillment deed in 1973. Kaiser Cement has no current knowledge of the Seattle Properties being leased to any third party during Kaiser Cement's ownership of the Seattle Properties. Kaiser Cement will supplement its answer to this question if further review of documents reveals information responsive to this request.

- c. *If not already provided, identify and provide a last known address or phone number for all persons, including Respondent's current and former employees or agents, other than attorneys, who have knowledge or information about the generation, use, purchase, storage, disposal, placement, or other handling of hazardous materials at, or transportation of hazardous materials to or from, the Site.*

**Response:** Kaiser Cement objects to the term "hazardous materials" on the grounds that it is vague, ambiguous and overly broad. Nevertheless, without waiving the foregoing objection, Kaiser Cement responds herein based on its understanding of the term "hazardous substances." As described in its Initial Statement above, Kaiser Cement has no knowledge as to the whereabouts of its former employees that could have information regarding the Seattle Properties. Kaiser Cement will supplement its answer to this question if further review of documents reveals information responsive to this request.

4. **Financial Information**

- a. *Provide true and complete copies of all federal income tax documents, including all supporting schedules, for 2004, 2005, 2006, 2007 and 2008. Provide the federal Tax Identification Number and, if documentation is not available, explain why in detail.*

**Response:** Kaiser Cement objects to the term "federal income tax documents" on the grounds that it is vague, ambiguous and overly broad. Nevertheless, without waiving the foregoing objection, Kaiser Cement responds herein based on its understanding of the term "federal income tax documents." Kaiser Cement's federal income tax returns for 2004, 2005, 2006, 2007 and 2008 are attached. **The information and documents responsive to this request are hereby designated Confidential Business Information pursuant to 42 U.S.C. §§ 9604(e)(7)(E) and 40 C.F.R. § 2.203(b) as provided by section reference on a separate disk marked "Confidential Business Information."**

- b. *Provide the Respondent's financial interest in, control of, or that the Respondent is a beneficiary of any assets (in the U.S. or in another country) that have not been identified in your federal tax returns or other financial information to be presented to EPA. If there are such assets, please identify each asset by type of asset, estimated value, and location.*

**Response:** Kaiser Cement objects to the terms "financial interest in" and "assets" on the grounds that they are vague, ambiguous and overly broad. Nevertheless, without waiving

the foregoing objection, Kaiser Cement responds herein based on its understanding of the terms "financial interest in" and "assets." To the best of Kaiser Cement's knowledge, all of Kaiser Cement's tangible and measurable assets are noted in the federal income tax returns described in Kaiser Cement's response to Question 4(a) above.

- c. *If Respondent is, or was at any time, a subsidiary of, otherwise owned or controlled by, or otherwise affiliated with another corporation or entity, then describe the full nature of each such corporate relationship, including but not limited to:*
  - i. *a general statement of the nature of the relationship, indicating whether or not the affiliated entity had, or exercised, any degree of control over the daily operations or decision-making of the Respondent's business operations at the Site;*

**Response:** Kaiser Cement objects to this question as overly broad, unduly burdensome, ambiguous, and unintelligible to the extent it seeks information related to "affiliated entities," and relies on the terms "affiliated with" and "any degree of control," without providing any definition of said terms or limiting the scope of their application to a reasonable set of activities or conduct. Kaiser Cement will respond herein by applying its understanding that the terms "affiliated entities" and "affiliated with" mean ownership of all outstanding shares of a business entity, and Kaiser Cement will respond herein by applying its understanding of the term "degree of control." Notwithstanding the foregoing objection, as described above, there are several entities that have based on a review of available information, during the relevant time periods (June 1944 to the present), ownership of Kaiser Cement was as follows:

As described above, Kaiser Cement has gone through a number of corporate mergers and name changes since June 1944. Given this fact, together with the over seventy years that have passed since that time, information regarding the identity of the owner of outstanding shares of Kaiser Cement during all relevant time periods is not readily available. What information has been determined as available is reported below. Kaiser Cement's investigation is ongoing, and Kaiser Cement will supplement its answer to this question if further review of documents reveals information responsive to this request.

Immediately prior to November 1986, Kaiser Cement was a publicly traded company. Since September 23, 1996, one hundred percent (100%) of the stock of Hanson Permanente Cement, Inc. has been owned by KH 1, Inc., a Delaware corporation. The current corporate address for KH 1, Inc. is 300 E. John Carpenter Freeway, Suite 1800, Irving, Texas 75062.

By way of further response, and based on a review of available information, Kaiser Cement is not aware of any documents or information establishing that the relationship between Kaiser Cement and the owner of the outstanding shares of Kaiser Cement during the relevant time periods was anything other than the normal relationship between a shareholder and the corporation issuing the shares owned by said shareholder,



with said shareholder exercising those rights and powers granted under applicable business entity law.

- ii. *the dates such relationship existed;*

**Response:** See response to Question 4(c)(i) above as if fully set forth herein.

- iii. *the percentage of ownership of Respondent that is held by such other entity(ies);*

**Response:** See response to Question 4(c)(i) above as if fully set forth herein.

- iv. *for each such affiliated entity provide the names and complete addresses of its parent, subsidiary, and otherwise affiliated entities, as well as the names and addresses of each such affiliated entity's officers, directors, partners, trustees, beneficiaries, and/or shareholders owning more than five percent of that affiliated entity's stock;*

**Response:** Kaiser Cement objects to this question as overly broad, unduly burdensome, ambiguous, and unintelligible to the extent it seeks information related to "affiliated entities" without providing any definition of said term. Kaiser Cement will respond herein by applying its understanding that the term "affiliated entity" means ownership of all shares of a business entity. Kaiser Cement further objects to this question as overly broad and unduly burdensome to the extent it calls for the identification, names and addresses of every officer, director, partner, trustee, beneficiary and/or shareholder of multiple corporate entities over a seventy six year time period, a substantial portion of which involved periods of time during which Kaiser Cement did not own the Seattle Properties and did not conduct any business activities at the Seattle Properties. Notwithstanding the foregoing objection, Kaiser Cement will provide the following information regarding the current officers, directors, and shareholders of Hanson Permanente Cement, Inc. and KH 1, Inc.:

**Current Officers, Directors, and Shareholders of Hanson Permanente Cement, Inc.:**

Karen M. Mance  
President & Treasurer  
Hanson Permanente Cement, Inc.  
One Oxford Centre, Suite 3000  
Pittsburgh, PA 15219

Jill M. Blundon  
Vice President & Secretary  
Hanson Permanente Cement, Inc.  
One Oxford Centre, Suite 3000  
Pittsburgh, PA 15219

Michael H. Hyer  
Vice President & Director  
Hanson Permanente Cement, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

John T. Berry  
Vice President & Asst. Treasurer  
Hanson Permanente Cement, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

Kari D. Saragusa  
Director  
Hanson Permanente Cement, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

John M. Hutchinson  
Assistant Secretary  
Hanson Permanente Cement, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

Robert D. VanBenschoten  
Assistant Secretary  
Hanson Permanente Cement, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

James L. Wallmann  
Assistant Secretary  
Hanson Permanente Cement, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

Amy C. Yi  
Assistant Secretary  
Hanson Permanente Cement, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

KH 1, Inc.  
Owner of 100% of shares of  
Hanson Permanente Cement, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

**Current Officers, Directors, and Shareholders of KH 1, Inc.:**

Daniel M. Harrington  
President & Director  
KH 1, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

John M. Hutchinson  
Assistant Secretary  
KH 1, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

Michael H. Hyer  
Vice President, Secretary & Director  
KH 1, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

John T. Berry  
Vice President & Treasurer  
KH 1, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

Robert D. VanBenschoten  
Assistant Secretary  
KH 1, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

James L. Wallmann  
Assistant Secretary  
KH 1, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

Amy C. Yi  
Assistant Secretary  
KH 1, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062

HBMA Holdings, LLC  
Owner of 100% of shares of  
KH 1, Inc.  
300 E. John Carpenter Freeway, Ste 1800  
Irving, TX 75062



- v. *provide any and all insurance policies for such affiliated entity(ies) which may possibly cover the liabilities of the Respondent at the Site; and*

**Response:** Kaiser Cement objects to this question as overly broad, unduly burdensome, ambiguous, and unintelligible to the extent it seeks information related to “affiliated entities” and it uses the phrase “might possibly cover” without providing any definition of said terms or phrases. Kaiser Cement will respond herein by applying its understanding that the term “affiliated entity” means ownership of all shares of a business entity, and Kaiser Cement will further respond herein by applying its understanding that the phrase “might possibly cover” means identifies Respondent as an insured or additional insured under said insurance policy. Kaiser Cement further objects to this question as calling for Kaiser Cement to make a legal conclusion as to whether an insurance policy “might possibly cover” a particular liability, as that is a question of contract interpretation and may be a matter of dispute between an insured and an insurer. In addition, Kaiser Cement objects to this question as overly broad and unduly burdensome to the extent that the phrase “the liabilities of Respondent at the Site” is not reasonably limited to liabilities associated with USEPA’s CERCLA authority. Notwithstanding the foregoing objections, Kaiser Cement responds by identifying, as if fully restated herein, those insurance policies identified in Kaiser Cement’s response to Question 5(a) below.

- vi. *provide any and all corporate financial information of such affiliated entities, including but not limited to total revenue or total sales, net income, depreciation, total assets and total current assets, total liabilities and total current liabilities, net working capital (or net current assets), and net worth.*

**Response:** Kaiser Cement objects to this question as overly broad, unduly burdensome, ambiguous, and unintelligible to the extent it seeks information related to “affiliated entities” and seeks “corporate financial information” without providing any definition of said terms, and to the extent it is not reasonably limited in time. Kaiser Cement will respond herein by applying its understanding that the term “affiliated” means ownership of all shares of a business entity. Notwithstanding the foregoing objections, Kaiser Cement responds by providing certain current information responsive to this Question regarding Hanson Permanente Cement, Inc. and KH 1, Inc. **The information and documents responsive to this request are hereby designated Confidential Business Information pursuant to 42 U.S.C. §§ 9604(e)(7)(E) and 40 C.F.R. § 2.203(b) as provided by section reference on a separate disk marked “Confidential Business Information.”**

5. **Insurance Coverage**

- a. *Provide copies of all property, casualty and/or liability insurance policies, and any other insurance contracts referencing the site or facility and/or Respondent’s business operations (including, but not limited to, Comprehensive General Liability, Environmental Impairment Liability, Pollution Legal Liability, Cleanup Cost Cap or Stop Loss Policies). Include, without limitation, all primary, excess,*

*and umbrella policies which could be applicable to costs of environmental investigation and/or cleanup, and include the years such policies were in effect.*

**Response:** Kaiser Cement objects to this question as overly broad, unduly burdensome, ambiguous, and unintelligible to the extent it uses the phrase "could be applicable to" without providing any definition of said phrase. Kaiser Cement will respond herein by applying its understanding that the term "could be applicable to" means, under applicable law, that an insurance policy should provide a legal defense to and/or indemnification of a particular liability. Kaiser Cement further objects to this question as calling for Kaiser Cement to make a legal conclusion as to whether an insurance policy "could be applicable to" a particular liability, as that is a question of contract interpretation and may be a matter of dispute between an insured and an insurer. Notwithstanding the foregoing objections, Kaiser Cement is producing known records in its possession which are responsive to this request. Kaiser Cement will supplement its answer to this question if further review of documents reveals information responsive to this request. **The information and documents responsive to this request are hereby designated Confidential Business Information pursuant to 42 U.S.C. §§ 9604(e)(7)(E) and 40 C.F.R. § 2.203(b) as provided by section reference on a separate disk marked "Confidential Business Information."**

- b. *If there are any such policies from question "5a" above which existed, but for which copies are not available identify each such policy by providing as much of the following information as possible:*
- i. *the name and address of each insurer and of the insured;*
  - ii. *the type of policy and policy numbers;*
  - iii. *the per occurrence policy limits of each policy; and*
  - iv. *the effective dates for each policy.*

**Response:** Kaiser Cement is producing a draft spreadsheet containing information responsive to this request. Kaiser Cement will supplement its answer to this question if further review of documents reveals information responsive to this request. **The information and documents responsive to this request are hereby designated Confidential Business Information pursuant to 42 U.S.C. §§ 9604(e)(7)(E) and 40 C.F.R. § 2.203(b) as provided by section reference on a separate disk marked "Confidential Business Information."**

- c. *Identify all insurance brokers or agents who placed insurance for the Respondent at any time during the period being investigated, as identified at the beginning of this request, and identify the time period during which such broker or agent acted in this regard.*

**Response:** Kaiser Cement is producing a draft spreadsheet containing information responsive to this request. Kaiser Cement will supplement its answer to this question if further review of documents reveals information responsive to this request. **The**

information and documents responsive to this request are hereby designated Confidential Business Information pursuant to 42 U.S.C. §§ 9604(e)(7)(E) and 40 C.F.R. § 2.203(b) as provided by section reference on a separate disk marked "Confidential Business Information."

- d. *Identify all communication and provide all documents that evidence, refer, or relate to claims made by or on behalf of the Respondent under any insurance policy in connection with the site. Include any responses from the insurer with respect to any claims.*

**Response:** To date, Kaiser Cement has not had any communications with any insurers regarding claims related to the Lower Duwamish Waterway in Seattle, Washington.

- e. *Identify any previous settlements with any insurer in connection with the site, or for any claims for environmental liabilities during the time period under investigation. Include any policies surrendered or cancelled by the Respondent or insurer.*

**Response:** To date, Kaiser Cement has not entered into any settlements with any insurers regarding any claims related to the Lower Duwamish Waterway in Seattle, Washington.

- f. *Identify any and all insurance, accounts paid or accounting files that identify Respondent's insurance policies.*

**Response:** Kaiser Cement is unaware of any documents responsive to this request. Kaiser Cement will supplement its answer to this question if further review of documents reveals information responsive to this request.

- g. *Identify Respondent's policy with respect to document retention.*

**Response:** All known Kaiser Cement records created at or prior to the 1985 to 1987 time frame when Kaiser Cement sold all assets related to its active business operations at the Seattle Properties were transferred to storage facilities located in California and continued to be stored in California. Due to certain retention obligations imposed by pending litigation in other matters, Kaiser Cement has retained at least one copy of all such records since such documents were transferred to California for storage. Any current Kaiser Cement records related to tax, finance or corporate governance are subject to retention obligations contained in the company's July 2008 Records Management and Retention Policy.

6. **Compliance with This Request**

- a. *Describe all sources reviewed or consulted in responding to this request, including, but not limited to:*
- i. *the name and current job title of all individuals consulted;*

- ii. *the location where all documents reviewed are currently kept.*

**Response:** Other than the federal income tax returns, corporate ownership and governance, and real estate title records reviewed in responding to the Request, the sole source of information to respond to these requests are the historical documents provided with this Initial Response. Two disks containing the responsive documents are enclosed with this Initial Response. The name and current job title of those individuals other than outside counsel for Kaiser Cement that were consulted in preparing these responses is provided in Kaiser Cement's response to Question 1(b), which is incorporated as if fully set forth herein.

## Insurance Policies Bates Numbers

## Index of Documents Provided

Bates Numbers	Document Provided		Request Number
KC2000001-148	Income Tax Returns for years 2004-2008	Confidential	4.a. 4.b.
KC2000149-155	Spreadsheet containing information re insurance carrier, policy numbers, policy limits, policy dates, and agent/brokers	Confidential	5.b. 5.c.
KC2000156-205	Title Information		1.d. 1.e. 3.a.v. 3.b.
KC2000206-216	Various news releases regarding Kaiser Cement varying from 1944 to the late 1960's		1.e. 1.f. 1.g. 2.d.
KC2000217-220	Affiliated entities corporate financial information	Confidential	4.c.vi.
See attached	Insurance Policies	Confidential	5.a.

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## Insurance Policies Bates Numbers

FF00001-0026	30002917-2924	30004525-4564	30007836-7843
70000001-42	30002926-2931	30004985-5041	30007849-7871
70100001-14	30002933-2934	30005045-5046	30007876-7882
70100019-35	30002936-2940	30005219-5287	30007887-7901
70200001-48	30002942-2948	30005352-5391	30007905-7916
70300001-27	30002951-2962	30005679-5749	30007920-7931
70400001-80	30002964-2970	30006183-6272	30007937-7950
70600001-10	30002972-2978	30006276-6311	30007969-7986
30000002-40	30002980-2985	30006318-6399	30008003-8017
30000042-69	30002987-2990	30006401-6451	30008021-8049
30000220-290	30002992-3001	30006512-6516	30008053-8070
30000714-770	30003004-3011	30006517-6523	30008074-8082
30000773-807	30003013-3020	30006530-6540	30008086-8100
30001146-1179	30003022-3029	30006719-6722	30008104-8114
30001223-1239	30003031-3040	30006726-6730	30008118-8154
30001241-1272	30003042-3044	30006733-6736	30008160-8187
30001275-1309	30003046-3054	30006738-6742	30008191-8200
30001311-1348	30003056-3059	30006745-6748	30008204-8208
30001377-1391	30003061-3065	30006750-6754	30008211
30001393-1409	30003067-3070	30006757-6762	30008215-8228
30001411-1413	30003072-3075	30006764-6765	30008246-8271
30001415-1428	30003077-3079	30006767-6775	30008275-8302
30001432-1707	30003081-3084	30006777-6788	30008306-8315
30001709-1997	30003086-3091	30006791-6794	30008317-8329
30002000-2005	30003583-3721	30006796-6799	30008332-8337
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30002198-2204	30003978-3982	30007235-7236	30008543-8594
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30002229-2244	30003999-4004	30007344-7375	30008639-8653
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30002437-2446	30004148-4197	30007662-7666	30008902-8919
30002475-2477	30004199-4229	30007670-7715	30008920-8928
30002530-2554	30004231-4301	30007719-7725	30008956-8968
30002647-2701	30004303-4370	30007730-7737	30008969-8979
30002703-2835	30004372-4378	30007743-7766	30008992-9111
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30002891-2896	30004395-4411	30007777-7793	30009165-9250
30002898-2904	30004416-4425	30007798-7810	30009258-9261
30002907-2915	30004429-4444	30007813-7821	30009302-9415

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